IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 890 OF 2007
IN
WRIT PETITION NO. 5965 OF 1991

Shri Ammasi Welliam Shetty
Since deceased through his LR
Shri Raju Ammasi Shetty ..Applicant

Vs.

Shri Munishwar Swamy Theware ..Respondent

Mr. R.S. Kate for applicant.
Mr. Shuja Uddin for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 15, 2007.

P.C.:

1. Heard Mr. Kate the learned counsel for the applicant. Mr. Shuja Uddin appears for respondent.

2. This is an application to set aside the order dated 25/4/2005 whereby the writ petition was dismissed as abated. In addition, the applicant also prayed for his name being added as petitioner in place

of his father's name.

3. The respondent-landlord has filed reply to this application and opposed the same. The death certificate issued by the Pimpri-Chinchwad Municipal Corporation shows that the original petitioner died on 9/7/2001. The respondent had filed Civil Application No.2438 of 2004 pointing out that though the petitioner died on 9/7/2001 no steps were taken to bring his LR on record and this court by its order dated 25/4/2005 allowed the said application and dismissed the petition as abated. None had remained present when the said Civil Application was decided by this court, though Shri J.C. Satpute was the learned Advocate for the original petitioner and his name was shown on the board. The Civil Application had appeared on several occasions with Mr.Satpute's name having been shown.

4. The office note stating that the restoration application is beyond time by one year and 293 days is, in fact, with reference to the order passed by this Court on 25/4/2005. However, the prayer made by the applicant to implead his name in place of his

father's name is, in fact, beyond time by six years.

5. It is also noted that both the courts below have held against the original petitioner. The trial court while passing the eviction decree in RCS No.925 of 1989 held that the defendant-petitioner was the Manager of the business and the licence granted to him was only for a period of 11 months. The Lower Appellate Court also held that the defendant-petitioner was only a licensee and confirmed the decree passed by the trial court. In the affidavit in reply presented today by the landlord, it has been pointed out that the monthly rent for the suit shop was Rs.350/- and the rent is due from 1/2/2002 till this date which amount comes to about Rs.22,500/-. The shop premises admeasure about 15 ft.x 10 ft. and it is within the Corporation limits. Though this was a fit case to reject the application, I deem it appropriate to allow it on the following conditions:-

(a) The delay in applying for LR being taken on record is condoned subject to payment of costs quantified at Rs.5000/- and the delay in

applying for restoration of the petition is condoned subject to payment of costs quantified at Rs.2000/-. Costs amount to be deposited with the Registry of this court within two weeks from today. The landlord is allowed to withdraw the said amount and the Registrar (Judicial) to pass appropriate orders in this regard on the praecipe being filed by the landlord.

(b) The application is allowed in terms of prayer clauses (b) and (c) subject to the condition that the arrears amount of Rs.22,500/- is deposited by the present applicant with the Registry of this court within four weeks from today and the said amount will be refunded to the landlord as soon as it is deposited. In addition, the applicant shall pay market rent at the rate of Rs.3000/- per month from the date the petition was dismissed as abated i.e. from 1/5/2005 and the arrears amount shall also be paid to the landlord within four weeks from today by the applicant directly. The market rent from

1/7/2007 shall be paid to the landlord directly till the petition is decided.

(B.H. Marlapalle,J.)